Supreme Court, U. S.
FILED
MAY 26 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-6638

---

ROGER DALLAS ROWBOTHAM,

Petitioner,

- v -

THE STATE OF OKLAHOMA,

Respondent.

---

# REPLY TO BRIEF OPPOSING CERTIORARI

---

JON D. DOUTHITT
417 W. 1st Street
Claremore, Oklahoma 74017

JACK GREENBERG
JAMES M. NABRIT, III
PEGGY C. DAVIS
DAVID E. KENDALL
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
Stanford University Law School
Stanford, California 94305

ATTORNEYS FOR PETITIONER

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-6638

---

ROGER DALLAS ROWBOTHAM,

Petitioner,

- v -

THE STATE OF OKLAHOMA,

Respondent.

---

# REPLY TO BRIEF OPPOSING CERTIORARI

---

In section III of its Brief Opposing Certiorari (referred to hereafter as Respondent's Brief), respondent challenges petitioner's assertion that the warnings given at the time of his arrest were the same as -- and, hence, as inadequate as -- those contained in the waiver of rights form which petitioner subsequently signed. Respondent asserts that

> "[t]he enumeration of the rights given petitioner at . . . [the time of his arrest] do not appear in the record."

Despite the "heavy burden [which]rests on the government to demonstrate that the defendant knowingly and intelligently

waived his privilege against self-incrimination and his right to retained or appointed counsel" where "interrogation continues without the presence of an attorney and a statement is taken," Miranda v. Arizona, 384 U.S. 436, 475 (1966), it is true that the State made no showing regarding the wording of the warning given at the time of petitioner's arrest. See Respondent's Brief at p.8. However, the record is not silent in this regard. At petitioner's preliminary hearing[1/] defense counsel elicited the following during cross examination of one of the arresting officers:

"JON DOUTHITT:

Q. Officer, you advised, your testimony is you advised the defendant of his rights as contained in this statement,[2/] is that correct?

A. At which point in time are you talking about?

Q. On Saturday the 16th of February.

A. The defendant was advised at least two times by myself of his rights on Saturday. Which time are you referring to?

Q. Both times.

A. Okay.

Q. You read this to him, is that correct?

A. The second time. The first time I quoted it to him orally verbatim.

Q. You just quoted it without reading it?

A. Right.

---

1/ Evidence taken at the preliminary hearing was relied upon by both prosecution and defense as the factual basis for argument of petitioner's motion to suppress. Transcript of Pretrial Proceedings, pp.13-14, 20-21.

2/ This statement was introduced at the preliminary hearing as State's Exhibit 1, and is quoted in relevant part at p.22 of the Petition for Certiorari. Transcript of Preliminary Hearing p.38, T. 109, 113-114.

Q. You have it memorized?

A. Yes, sir.

Q. You advised him specifically of the language contained in this paragraph?

A. Yes, sir."

Transcript of Preliminary Hearing, pp.58-59. See also id. at p. 47, at which the same officer stated on cross examination

> ". . . we again the second time formally advised the defendant of his constitutional rights according to the Miranda decision in the form of State's Exhibit number 1."3/

Petitioner's statement "that the language used to advise him of his rights was the same in each instance," Respondent's Brief, p.7, is confirmed by this uncontradicted testimony.

Respectfully submitted,

JON D. DUTHITT
417 W. 1st Street
Claremore, Oklahoma 74017

JACK GREENBERG
JAMES M. NABRIT, III
PEGGY C. DAVIS
DAVID E. KENDALL
10 Columbus Circle
New York, New York 10019

ANTHONY G. AMSTERDAM
Stanford University Law School
Stanford, California 94305

ATTORNEYS FOR PETITION

---

3/ See note 2, supra.